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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,680	12/06/2005	Serge Calamel	0512-1306	3014
466 7590 01/03/2007 YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			EXAMINER SCHILLINGER, ANN M	
			ART UNIT	PAPER NUMBER
			3738	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/03/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/559,680	Applicant(s) CALAMEL, SERGE	
	Examiner Ann Schillinger	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 15-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/6/2005</u> . | 6) <input checked="" type="checkbox"/> Other: <u>Attachment A</u> .                     |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 16-28 are objected to because of the following informalities: the lack the definite article required for dependent claims. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15 recites the limitation "the end wall" in line 9. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-23, 27, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Willi (U.S. Pat. No. 5,549,696). Willi discloses the following of claim 15: an acetabular implant cup insert for a joint prosthesis, the insert being of the type comprising a metal shell (col. 2, line 40; element 2) and a polymer lining (col. 2, line 52; element 1) lining the inside space of said shell, a receptacle (1f) for a prosthetic head being formed in the lining, said shell presenting on its inside space means for preventing said lining being extracted from the shell and means for

Art Unit: 3738

preventing the lining turning in the shell, wherein said means for preventing the lining being extracted comprise a stud (col. 4, lines 57-59; element 4) disposed on the end wall of the shell and presenting at least one groove or lip (Attachment A).

Willi discloses the limitations of claims 16-22 as shown in Attachment A.

Willi discloses the following of claim 23: an insert according to claim 15, wherein the anterior portion of said shell presents a conical shape (as shown in Figure 2a).

Willi discloses the following of claim 27: an acetabular implant of the type comprising a cup for being fastened in the pelvis or a shoulder blade of a patient, and an insert lining the inside of said cup in order to receive a prosthetic head, wherein the insert is of the type according to claim 15 (col. 1, lines 5-14, 20-26).

Willi discloses the following of claim 28: a joint prosthesis of the type comprising an acetabular implant and a prosthetic head, wherein said implant is of the type according to claim 27 (col. 1, lines 5-14, 20-26).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Willi in view of Noble et al. (U.S. Pat. No. 5,002,580). Willi does not teach the use of ceramics as a liner along

Art Unit: 3738

the insert because ceramics are biologically inert and serve well as a bearing surface. Noble et al. teaches this in col. 9, lines 9-13. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use ceramics in the implant because they will not react badly in the patient's body while still providing a strong bearing surface.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Willi in view of Noiles (U.S. Pat. No. 4,678,472). The Willi reference discloses the structural limitations of the acetabular insert, but not how it is constructed and inserted. Noiles teaches claims 25 as follows: an insert according to claim 15, wherein said lining is obtained by an operation of thermocompressing said polymer in said inside space of the shell (col. 9, lines 20-26), followed by a machining operation (col. 9, lines 32-36). As described by Noiles, this process is well known in the art, and allows the liner to be fit properly to the outer shell before it is inserted. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use these techniques as a potential method of constructing and inserting the acetabular cup.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Willi in view of Fixel (U.S. Pat. No. 4,180,873). The Willi reference discloses the structural limitations of the acetabular insert, but not how it is constructed and inserted. Fixel teaches the method of inserting a previously shaped liner into the outer shell by impaction in col. 2, lines 18-25. This method provides a simpler means of constructing the acetabular cup before it is inserted into the patient. Therefore, it would have been obvious to one of ordinary skill in the art at the time the

Art Unit: 3738

invention was made to use this technique as one of the many methods that are available for the construction and the insertion of the acetabular cup.


### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Schillinger whose telephone number is (571) 272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ann Schillinger  
December 12, 2006

  
**ALVIN J. STEWART**  
**PRIMARY EXAMINER**

Attachment A

